The Steimel Law Group

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Principal

February 10, 2017

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: **REQUEST FOR CONFIDENTIALITY PURSUANT TO 47 C.F.R. § 0.457(a), (c) and (d), 5 U.S.C. § 552(b)(4) AND 47 C.F.R. § 0.459**

To Whom It May Concern:

On behalf of our client, Megaphone, Inc. ("Megaphone"), we request long term confidential treatment for the materials contained in Exhibits A and B of Megaphone's application for numbering resources as an interconnected VoIP provider ("IPES") under Section 52.15(g)(3)(i) of the Commission's Rules.

Pursuant to 47 C.F.R. §§ 0.457 and 0.459, Megaphone requests that Exhibits A and B to its application ("Exhibits") are accorded confidential treatment on a long-term basis. Megaphone is requesting confidentiality because the information concerns the internal business agreements and operations of Megaphone and its carrier partner for PSTN connectivity, which information would not otherwise be made public. This information is confidential and proprietary and entitled to protection under the relevant statutes and rules.

The Applicant's requests are all for Long-Term Confidentiality.

The instant request for confidentiality comports with the regulations and rulings of the FCC. The Commission has recognized that if disclosure of information submitted to the agency would result in competitive harm to the submitting party, the information must remain confidential. *Jeffrey A. Krause*, FOIA Control No. 96-80, MO&O, 11 FCC Rcd l0819 (l996) (*citing National Parks and Conservation Assn' v. Morton*, 498 F.2d 765, 770-71 (D.C. Cir. 1974)).

The information contained in Exhibits A and B reveals the business relationships and operations of Megaphone and its carrier partner. Megaphone has a confidentiality agreement with its carrier partner that prevents it from making certain business information public, including the information contained in these Exhibits. Making the information in the Exhibits public would place Megaphone in violation of its non-disclosure and confidentiality agreements. Neither customers nor the public are afforded access to view this information, and it is common in the industry that such information is kept confidential on a need to know basis.

Information regarding Megaphone's operations, and that of its carrier partner, constitute highly confidential trade secrets that Megaphone has a right to keep from being disclosed to its competitors and the public at large. This information constitutes trade secrets and business proprietary information, the disclosure of which would subject Megaphone to significant competitive harm. Megaphone cannot afford to let its competitors know about its operations and is prohibited from sharing such information related to its carrier partner. This information falls squarely within Section 0.457(d), as further discussed below.

Megaphone believes that it *per se* qualifies for protection under 47 C.F.R. § 0.457(d) and 5 U.S.C. § 552(b)(4), but also submits this justification under 47 C.F.R. § 0.459 out of an abundance of caution and to alert anyone attempting to access the attached materials. Megaphone seeks confidential treatment for the information included in the Exhibits.

Pursuant to 47 C.F.R. §§ 0.457(d) and 0.459, and 5 U.S.C. § 552(b)(4), Megaphone requests that the information attached hereto is accorded confidential treatment because it discusses and contains internal operational information that is not public and could cause substantial competitive harm if it were to be made public. As such, the information must remain confidential. *Jeffrey A. Krause*, FOIA Control No. 96-80, MO&O, 11 FCC Rcd. 10819 (1996) (citing *National Parks and Conservation Assn' v. Morton*, 498 F.2d 765, 770-71 (D.C. Cir. 1974)).

In *Martha H. Platt*, 5 FCC Rcd. 5742 (1990), the Commission refused to make available for a FOIA request actual audit reports that contained a substantial amount of competitively sensitive raw data because of the possible impact of such disclosure on the effectiveness of its audit process. Despite its authority to compel the submission of the information on which the audit reports are based, the Commission feared that its routine disclosure could nevertheless diminish the quantity as well as the quality of future submissions by the carriers. Under these circumstances, the Commission concluded that the FOIA did not require disclosure of commercially sensitive information submitted by a carrier to Commission auditors. *See also Bell Telephone Operating Companies*, 10 FCC Rcd. 11541 (1995) ("[the Commission's confidentiality] policy recognizes the carriers' legitimate interest in protecting confidential commercial and financial information from public disclosure to avoid competitive harm. This policy also enhances the efficiency and integrity of our audit processes by encouraging carriers to comply in good faith with staff requests for information.")

In *Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(D) Biennial Audit Procedures*, CC Docket No. 96-150, FCC 02-239, 17 FCC Rcd. 17102 (2002), the FCC discussed Rule 0.459 and set forth the showings that must be made to obtain confidential treatment. That case mentions three criteria that should be demonstrated – explanation of the substantial competitive harm, identification of measures to prevent disclosure, and identification of previous disclosure to third parties. Megaphone's internal business information meets this test. Megaphone does not make this information public, providing access

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to competitors would cause substantial competitive harm and no disclosures have been made to third parties without the imposition of strict confidentiality and non-disclosure understandings.

In response to the criteria set forth in both the above-mentioned cases and Rules 0.457 and 0.459, Megaphone states that disclosure of the items disclosed to the FCC in its Application would expose Megaphone to substantial competitive harm by disclosing details of its competitive operational plans, and specifics of its interconnection points and reliance of certain system designs. Disclosure would enable competitors to determine Megaphone's design, strategy and operations. Disclosure would also cause Megaphone to violate confidentiality agreements to which it is a party.

Should the Commission determine that any of the information submitted is not confidential, or desires to have Megaphone redact the written submission, Megaphone requests that the Commission provide it with time to undertake that effort. Megaphone requests that should the Commission deny this request for confidentiality, or should this information be subject to a requirement to make any of its filing public, that Megaphone be granted an opportunity to oppose such release, or withdraw its submission from the Commission. Megaphone should be granted the opportunity to seek a protective order should that prove to be necessary.

Very truly yours,

Walter E. Steimel, Jr.

CC: Megaphone, Inc.

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